



**Washington Department of Fish and Wildlife
Additional Terms for Requests for Quotation and Field Orders
Revised October 20, 2016**

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I. STANDARD DEFINITIONS

This section contains definitions of some of the terms commonly used in Solicitations and Contracts.

ALTERNATE - Goods or services that deviate with respect to features, performance, or use from the goods or services specified in the Solicitation.

BID - A written offer to perform a contract to provide goods or services to the State in response to a Solicitation.

BIDDER - A supplier who submits a bid to the Purchaser.

CFR - The Code of Federal Regulations of the United States. All references in this document to CFR titles or sections shall include any successor, amended or replacement regulation.

CONTRACT - An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration. The Bid is an offer to contract with the Purchaser. The Bid becomes a Contract when officially accepted in writing by the Purchaser by the issuance of a Contract. A Contract may take the form of a purchaser order, field order or other written agreement/order document issued by the Purchaser.

CONTRACTOR - An individual, company, corporation, firm, or combination thereof with whom the Purchaser develops a Contract for the purchase of goods and/or services.

CONTRACTOR'S REPRESENTATIVE - An individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor concerning the terms and conditions set forth in bid and contract documents.

EQUAL - Goods or services that meet or exceed the quality, performance, and use of the brand, model, or specifications in the Solicitation.

FREE ON BOARD (FOB) DESTINATION – The Purchaser accepts legal title of goods and/or services at point of delivery. Contractor determines mode of freight and accepts responsibility for payment of freight charges. Contractor accepts responsibility for processing of freight claims.

LEAD TIME - The period of time between when the Contractor receives the order and the Purchaser receives the goods and/or services.

PURCHASER - Unless otherwise stated, the Department of Fish and Wildlife of the State of Washington, any division, section, office, unit or other entity of the Purchaser, or any of the officers or other officials lawfully representing the Purchaser.

RCW - The Revised Code of Washington. All references in this document to RCW chapters or sections shall include any successor, amended or replacement statutes.

SOLICITATION - A request for quotations, request for proposals, request for qualifications/quotation or other procurement document by which the Purchaser solicits Bids from Bidders.

SOLICITATION COORDINATOR - The individual named in the Solicitation document as the Purchaser's sole point of contact for the Solicitation.

SUBCONTRACTOR - A person or business who is providing or performing an essential aspect of the Contract under the direction of the Contractor.

USC – The United States Code. All references in this document to USC chapters or sections shall include any successor, amended or replacement statutes.

WAC - The Washington Administrative Code. All references in this document to WAC chapters or sections shall include any successor, amended or replacement regulations.

II. STANDARD INSTRUCTIONS TO BIDDERS

This section contains instructions regarding the preparation and submission of bids, proposals, or quotations.

1. **BIDDER'S RESPONSIBILITIES.** The Bidder will read and understand the Solicitation and all attachments; establish and maintain vendor registration in the Washington Electronic Business Solution (WEBS) system; seek clarifications if necessary; become familiar with, and abide by, applicable federal laws, state and local statutes, regulations, and ordinances; visit delivery and service locations as required; and/or become familiar with and verify any environmental factors that may impact current or future pricing.

2. **WEBS.** This Solicitation and all amendments and answers to questions about the Solicitation will be published through the Washington Electronic Business Solution (WEBS) system. All Bidders must register with WEBS at www.des.wa.gov and maintain an accurate Bidder profile. Bidders are also responsible for downloading this Solicitation and all other documents related to the Solicitation, including amendments. Notification of amendments to the Solicitation will be provided only to those Bidders who have registered with WEBS and have downloaded the Solicitation from WEBS. Failure to do so may result in a Bidder having incomplete, inaccurate, or otherwise inadequate information about the project and proposal requirements.

3. **QUESTIONS & INQUIRIES.** All questions related to the Solicitation shall be directed to the Solicitation Coordinator. Inquiries shall be in writing and shall reference the appropriate section and paragraph number. Only questions answered by the Purchasee in writing are binding.

4. **PREPARATION OF BID.** Bids must be received at the location on or before the date and time specified in the Solicitation. Late bids will be returned unopened. Bids shall be submitted in the form and manner identified in the Solicitation. Bids must be typewritten or in ink and signed in ink by the contractor's authorized representative. Incomplete or unsigned bids will be rejected. Bidders shall extend unit pricing as required. In the event of an error in the extension of prices, the unit price shall prevail. Bid prices shall include all associated costs and remain firm for ninety calendar days after bid opening date. Bid prices shall not include sales tax unless specifically requested.

5. **WITHDRAWAL OR MODIFICATION OF BID.** After submittal and at any time prior to the date and time set for opening, the Bidder may, upon written request, modify or withdraw the bid. After bid opening no bid shall be altered or amended. The Solicitation Coordinator may allow a bid to be withdrawn if the Bidder demonstrates that they miscalculated bid prices. A low Bidder, who claims error and fails to enter into a contract with the Purchaser, shall be prohibited from bidding on the same commodity or service if the requirement is subsequently rebid by the Purchaser. Negligence in preparing a bid does not give a Bidder the right to withdraw their bid after opening.

6. **AWARD.** Upon award, notification will be sent to all participating Bidders by the Solicitation Coordinator.

7. **CONTRACT FORMATION.** A Bidder's response to the Solicitation is an offer to contract with the Purchaser. A bid response becomes a contract when officially accepted in writing by the Purchaser.

8. **MINORITY, WOMEN AND VETERAN-OWNED BUSINESSES.** The Purchaser encourages participation by minority and women-owned business enterprises certified by the Office of Minority and Women's Business

Enterprises (OMWBE); and veteran-owned businesses certified by the Department of Veteran's Affairs (DVA). If any part of a contract resulting from this Solicitation is subcontracted to an OMWBE or DVA-certified firm the Contractor shall submit a statement of participation indicating what OMWBE or DVA certified firm was used and the dollar amount of their subcontracts.

III. STANDARD TERMS AND CONDITIONS

This section contains standard terms and conditions that apply towards any contract or order of goods and services from the Contractor.

1. **ENTIRE AGREEMENT.** This document, including the Solicitation, all amendments and subsequently issued Contracts issued by the Purchaser comprises the entire agreement between the Purchaser and the Contractor and shall be governed by the laws of the State Of Washington incorporated herein by reference. The venue for legal action shall be the Superior Court for the State Of Washington, County of Thurston. The Purchaser reserves the right to reject bids that propose alternate or additional terms and conditions.

2. **ADVERTISING.** Contractor shall not advertise or publish information concerning the Contract in any form or media without prior written consent from the Purchaser.

3. **ANTITRUST.** The Purchaser maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Purchaser. Therefore, the Contractor hereby assigns to the Purchaser any and all claims for such overcharges except overcharges which result from antitrust violations commencing after the price is established under the Contract and which are not passed on to the Purchaser under an escalation clause.

4. **AWARD FACTORS.** Unless otherwise specified in the Solicitation, Purchaser contracts shall be awarded to the lowest responsible and responsive Bidder subject to the preferences provided by law. Award criteria shall include all factors identified in RCW 39.26.160 and the contractual requirements provided herein. No MWBE preference will be included in the evaluation of bids/proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/proposals will not be rejected or considered non-responsive on that basis. Rights Reserved subject to the provisions of RCW 39.26.160, the Purchaser reserves the right to a) waive any informality; b) reject any or all bids, or portions thereof; c) reissue the Solicitation, or negotiate under provisions outlined therein; or d) award on an all or none consolidated basis taking into consideration reduction in administrative costs as well as unit bid prices.

5. **CHANGES.** No alteration in any of the terms, conditions, or contractual requirements herein shall be effective without the written consent of the Purchaser as evidenced by issuance by the Purchaser of a contract change notice or amendment.

6. **CHARGES FOR HANDLING.** No charges will be allowed by the Purchaser for handling that includes but is not limited to packing, wrapping, bags, containers, or reels, unless otherwise stated herein.

7. COMPLAINTS AND PROTESTS

Complaints: Bidders considering submitting a bid or proposal in response to any any solicitation for goods and services under RCW 39.26 may submit complaints regarding a particular solicitation to the Solicitation Coordinator. Vendors may submit a complaint on the following for any solicitation: a) the Solicitation unnecessarily restricts competition; b) the Solicitation evaluation or scoring process is unfair or flawed; or c) the Solicitation requirements are inadequate or insufficient to prepare a response. All complaints submitted under this process must be in writing; be received by the Solicitation Coordinator by e-mail not later than five business days before the vendor's response to a solicitation is required to be submitted to the Purchaser; clearly articulate the basis for the complaint; and include a proposed remedy. The Purchaser will respond to complaints in writing and post the response (and any changes to the solicitation required by the response) on WEBS. Vendors may not appeal the response or raise the same complaint during any protest period.

Protests: After the announcement of the Apparent Successful Bidder (ASB), the Solicitation Coordinator must offer a debriefing conference to any Bidder upon request. Bidders must request a debriefing conference within three (3) business days after the ASB is announced. In order to submit a protest for a Solicitation, a) the Bidder must have

submitted a response for that solicitation; b) the Bidder must have participated in a debriefing conference for that solicitation; c) the protest must be received by the Solicitation Coordinator by e-mail or letter within (5) business days after the Bidder's debriefing conference; and d) the protest must be in writing and clearly articulate the basis for the protest. Bidders may submit a protest on a matter of bias, discrimination, or conflict of interest on the part of an evaluator; errors in computing the scores; or non-compliance with procedures described in the procurement document or the Purchaser's protest process. The Purchaser's Chief Financial Officer (CFO) is responsible for investigating and responding to the protest in writing within 10 business days from receipt of the protest, unless additional time is needed. If additional time is needed the CFO will notify the protesting Bidder within 10 business days from receipt of the protest. The CFO's decision regarding a protest is final.

8. **CONFLICT OF INTEREST.** Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Purchaser may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the Purchaser that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this Contract. In the event this Contract is terminated as provided above, the Purchaser shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of the Purchaser provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Purchaser makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

9. **CONTRACT SUSPENSION.** The Purchaser may at any time and without cause, suspend the Contract or any portion thereof, for a period of not more than thirty (30) calendar days, by written notice to the Contractor. Contractor shall resume performance within fifteen (15) calendar days of written notice from the Purchaser.

10. DELIVERY

Time: Delivery must be made during normal work hours and within time frames proposed by Bidder herein and subsequently accepted by the Purchaser. Failure to comply may subject Contractor to non-delivery assessment charges and/or liquidated damages as appropriate. The Purchaser reserves the right to refuse shipment when delivered after normal working hours. Contractor shall verify specific working hours of individual agencies and so instruct carrier(s) to deliver accordingly. The acceptance by the purchaser of late performance with or without objection or reservation by the purchaser shall not waive the right to claim damage for such breach, nor preclude the Purchaser from pursuing any other remedy provided herein, including termination, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

Terms: Unless otherwise specified, all goods are to be shipped FOB Destination freight prepaid and included. Where specific authorization is granted to ship goods FOB shipping point, Contractor agrees to prepay all shipping charges, route as instructed or if instructions are not provided, route by cheapest common carrier. Each invoice for shipping charges shall contain the original or a copy of the freight bill indicating that the payment for shipping has been made. The purchaser reserves the right to refuse COD shipments.

Location: All deliveries are to be made to the applicable delivery location in accordance with Interstate Commerce Commission rules or as indicated in the Contract. When applicable, Contractor shall take necessary actions to safeguard items during inclement weather.

Unauthorized: In no case shall Contractor initiate performance prior to receipt of written or verbal authorization from the Purchaser. Expenses incurred otherwise shall be borne solely by the Contractor.

11. **DETERMINATION OF RESPONSIBILITY.** During bid evaluation, the Purchaser reserves the right to make reasonable inquiry to determine the responsibility of any Bidder. Requests may include, but not be limited to, financial statements, credit ratings, references, record of past performance, on-site inspection of Bidder's, or Bidder's subcontractor's facilities. Failure to respond to said request(s) will be sufficient reason to consider the bid non-responsive. During the Contract term, should the Contractor be determined to be in violation of federal, state, or local laws or regulations, the Purchaser reserves the right to modify its initial determination of responsibility at the time of award and to take other action as determined appropriate, including but not limited to termination of the Contract.

12. **DISPUTES.** Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the other party. The request for a dispute hearing must be in writing; state the disputed issue(s); state the relative positions of the parties; state the party's name, address, and Contract number; and be mailed to the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days. The other party shall review the written statements and reply in writing to both parties within 10 working days. The other party may extend this period if necessary by notifying the parties. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal. Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

13. **DUPLICATE PAYMENT.** The Purchaser shall not pay the Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

14. **FILING REQUIREMENT.** Contracts may be required to be filed with the Department of Enterprise Services (DES). No Contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) business days following the date of filing and until approved by DES. In the event DES fails to approve the Contract, the Contract shall be null and void.

15. **FINAL INVOICE.** The Contractor shall submit the final invoice not later than 60 calendar days from the end of the Contract period.

16. **FORCE MAJEURE.** Except for payment of sums due, neither party shall be liable to the other or deemed in default under the Contract if and to the extent that such party's performance of the Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with the Contract. The Purchaser reserves the right to cancel the Contract and/or purchase materials, equipment, or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the Purchaser.

17. **HOLD HARMLESS.** To the fullest extent permitted by law, the Contractor shall indemnify, defend, and save harmless the Purchaser, and all officers and employees of the Purchaser, from and against any and all claims for injuries or death, including claims by Contractor's employees, or for damages arising out of, resulting from, or incident to Contractor's performance or failure to perform the Contract, or for patent, trademark, copyright, or franchise infringement arising from the purchase, installation, or use of goods and services ordered. Contractor's obligation to indemnify, defend and save harmless shall not be eliminated or reduced by any alleged concurrent negligence of the Purchaser or its agencies, employees, and officers. Contractor waives its immunity under Title 51 RCW to the extent required to indemnify, defend, and save harmless the Purchaser and its officers and employees.

18. **INDEPENDENT CAPACITY OF THE CONTRACTOR.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Purchaser. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Purchaser or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

19. **IDENTIFICATION.** All invoices, packing lists, packages, instruction manuals, correspondence, shipping

notices, shipping containers, and other written documents affecting the Contract shall be identified by the applicable Contract number. Packing lists shall be enclosed with each shipment, indicating the contents therein.

20. **INSPECTION AND REJECTION.** The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Contractor thereof. Without limiting any other rights, the Purchaser at its option, may require the Contractor to a) repair or replace, at Contractor's expense, any or all of the damaged goods; b) refund the price of any or all of the damaged goods; or c) accept the return of any or all of the damaged goods.

21. **INSTATE PREFERENCE-RECIPROCITY.** Pursuant to RCW 39.26.260 and RCW 39.26.270 and WAC 200-300-085 the State of Washington has established a schedule of penalties applicable against firms submitting bids from states which grant a preference to their own in-state businesses. The penalties are available on the Department of Enterprise Services website. The appropriate percentage penalty will be added to each bid bearing the address from a state with in-state preferences rather than subtracting a like amount from Washington State Bidders. This action will be used only for bid analysis and award. In no instances shall the increase be paid to a Bidder whose bid is accepted.

22. **INSURANCE.** The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the Purchaser should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or subcontractor, or agents of either, while performing under the terms of the Contract. The Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of the Contract, as follows:

Commercial General Liability Insurance Policy: Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of Contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability: In the event that services delivered pursuant to the Contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Marine Insurance: If the Contractor will be using a vessel or boat in the performance of the Contract, the Contractor shall maintain a Commercial Marine Protection and Indemnity (P&I) Policy with P&I limit of not less than \$1,000,000 per occurrence and with a deductible not to exceed \$25,000 (to include diving operations if diving is a part of the contracted service for any liability which includes coverage for injury to the crew and passengers).

The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, the Purchaser, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give Purchaser thirty (30) calendar days advance notice of any insurance cancellation. The Contractor shall submit to Purchaser within fifteen (15) calendar days of the Contract effective date, a certificate of insurance that outlines the coverage and limits defined in this section. The Contractor shall submit renewal certificates as appropriate during the term of the Contract; the failure of the Purchaser to enforce this term in no way reduces the Contractor's responsibilities under this section.

23. **INVOICING AND PAYMENT.** Contractor shall provide an original and two (2) copies of invoices. Each invoice shall be submitted as required by the Contract and shall reference the Contract number. Invoices shall be properly annotated with applicable prompt payment discount(s). Payment is the sole responsibility of, and will be made by, the Purchaser. Payment is due within thirty (30) days of invoice. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified. No advance payments shall be made for any products or services furnished by Contractor pursuant to the Contract.

Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.

24. **LEGAL FEES.** The Contractor covenants and agrees that in the event suit is instituted by the Purchaser for any nonperformance, breach or default on the part of the Contractor, and the Contractor is adjudged by a court of competent jurisdiction, the Contractor shall pay to the Purchaser all costs, expenses expended or incurred by the purchaser in connection therewith, and reasonable attorney's fees.

25. **LICENSING, ACCREDITATION AND REGISTRATION.** The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of the Contract.

26. **LIENS, CLAIMS AND ENCUMBRANCES.** All materials, equipment, or services shall be free of all liens, claims, or encumbrances of any kind and if the Purchaser requests, a formal release of same shall be delivered to the Purchaser.

27. **NONDISCRIMINATION.** During the performance of the Contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, the Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Purchaser. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance.

28. **PERFORMANCE.** Acceptance by the Purchaser of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damage for breach, or terminate the Contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor.

29. **PERSONAL LIABILITY.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with the Contract.

30. **PREVAILING WAGE.** If work performed by Contractor employees is subject to Chapter 39.12 RCW, the Contractor shall pay the prevailing rate of wages to all Contractor workers, laborers or mechanics in the performance of any part of the work described in the Contract in accordance with state law and Department of Labor and Industries rules and regulations. The Contractor shall comply with the filing requirements required by this statute, including Statement of Intent to Pay Prevailing Wage, and Affidavit of Wages Paid.

31. **PRIVACY.** Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. The Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Purchaser or as otherwise required by law. Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Purchaser for any damages related to the Contractor's unauthorized use of personal information.

32. **PROPRIETARY INFORMATION.** Bidders should clearly identify any material that constitutes valuable formulae, designs, drawings, and research data claimed to be exempt from public disclosure under law, along with a statement of the basis for such claim of exemption. Pricing and entire bid packages are not considered proprietary. The Purchaser will give notice to the Bidder of any request for disclosure of such information received within 5 (five) years from the date of submission. Failure to so label such materials or to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by the submitting Bidder of any claim that such materials are, in fact, so exempt.

33. **QUALITY STANDARDS.** Product or service specifications herein are intended solely to clearly describe type

and quality and not to be restrictive. Trade reference specifications describe the type product thus far found to best meet agency functional requirements and provide the most economical use life under agency use situations. So as not to misrepresent the requirements herein, brands other than those specified will therefore be considered on the basis of whether at least equal in quality/performance. Failure to submit with bid complete documentation sufficient to establish products bid as at least equal may be grounds for rejection. By submitting bid, Bidder expressly warrants product bid as at least equal in quality and performance. The Purchaser's acceptance of a product bid as an "equal" is conditioned on the Purchaser's inspection and testing after receipt. If, in the sole judgment of the Purchaser, the item is determined not to be an equal, the bid may be rejected or the product returned at Bidder's expense and/or the Contract canceled without any liability whatsoever to the Purchaser. Any bid containing a brand that is not of equal quality, performance or use specified must be represented as an "alternate" and not as an "equal"; failure to do so shall be sufficient reason to consider the bid non-responsive.

34. **REGISTRATION WITH DEPARTMENT OF REVENUE.** The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under the Contract.

36. **SAVINGS.** In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Purchaser may terminate the Contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the Purchaser's discretion under those new funding limitations and conditions.

37. **SEVERABILITY.** The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

38. **SITE SECURITY.** While on Purchaser premises the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

39. **STATEWIDE VENDOR PAYMENT REGISTRATION.** The Contractor is required to be registered in the Statewide Vendor Payment System prior to submitting a request for payment under the Contract. The Washington State Department of Enterprise Services (DES) maintains the Statewide Vendor Payment System; to obtain registration materials contact the Statewide Payee Desk at (360) 407-8180; or go to: <http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>.

40. **SUBCONTRACTING.** Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the Purchaser. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Department for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract. Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. The Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

41. **SUPERVISION AND COORDINATION.** The Contractor shall a) competently and efficiently, supervise and direct the implementation and completion of all Contract requirements specified herein; b) designate in its bid to the Purchaser, a representative(s) with the authority to legally commit Contractor's firm; and c) promote and offer to the Purchaser only those materials, equipment, and/or services as stated herein and allowed for by contractual requirements. Violation of these conditions will be grounds for Contract termination.

42. **TAXES AND FEES.** The Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to the Contract. Failure to do so shall constitute breach of the Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor, however, shall not make any charge for federal excise taxes and Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

43. **TITLE AND RISK OF LOSS.** Regardless of FOB point, the Contractor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery and acceptance. Such loss, injury, or destruction shall not release the Contractor from any obligation hereunder.

44. **WAIVER.** Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Purchaser.

45. **WARRANTIES.** For products, the Contractor warrants that all materials, equipment, and/or services provided under the Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser. For price, the Contractor warrants that prices of materials, equipment, and services set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same goods or services under similar conditions and in like or similar quantities.

46. **WORKERS RIGHT TO KNOW.** Chapter 296-62 WAC requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this Solicitation, or Contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and name and address of the chemical manufacturer, importer, or other responsible party. The Washington Department of Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment-pending receipt of a legible copy of the MSDS.

47. **WORKERS SAFETY LAWS AND REGULATIONS REQUIREMENTS.** The Contractor certifies that all items furnished and purchased under this Contract will conform to and comply with federal and state workers safety standards and regulations. The Contractor further agrees to indemnify and hold harmless the Purchaser from all damages assessed against the Purchaser as a result of the Contractor's failure to comply with federal and state workers safety standards and regulations, and for the failure of the items furnished under this Contract to so comply.

48. BREACH, DEFAULT, TERMINATION

Breach: A breach of a term or condition of the Contract shall mean any one or more of the following events: (1) Contractor fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the Contract signed by the Purchaser; (2) Contractor breaches any warranty or fails to perform or comply with any term or agreement in the Contract; (3) Contractor makes any general assignment for the benefit of creditors; (4) in the Purchaser's sole opinion, Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (5) Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; (6) any receiver, trustee, or similar official is appointed for Contractor or any of the Contractor's property; (7) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination, in the Purchaser's sole opinion renders the Contractor unable to perform any aspect of the Contract.

Default: A Contractor may be declared in default by the Purchaser for failing to perform a contractual requirement or for a material breach of any term or condition.

Termination for Convenience: The Purchaser may terminate the Contract, in whole or in part, at any time and for any reason by giving ten (10) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or of the Contractor's suppliers or subcontractors, the Purchaser shall be entitled, by written or oral notice, to cancel and/or terminate the Contract in its entirety or in

part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.

Termination by Mutual Agreement: The The Purchaser or the Contractor may terminate the Contract in whole or in part, at any time, by mutual agreement with thirty (30) calendar days written notice from one party to the other.

Sanctions: Any violations of the mandatory provisions of the Contract shall be a material breach of Contract for which the Contractor may be subject to a requirement of specific performance, or damages and sanctions provided by Contract, or by applicable laws.

49. OPPORTUNITY TO CURE DEFAULT.

Events: In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the Purchaser may issue a written or oral notice of default and provide a period of time in which Contractor shall have the opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. The Purchaser is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely by the Purchaser. The Purchaser may terminate the Contract for nonperformance, breach, or default without allowing the opportunity to cure by the Contractor.

Remedies: If the nonperformance, breach or default remains after Contractor has been provided the opportunity to cure, the Purchaser may do one or more of the following: a) exercise any remedy provided by law; b) terminate the Contract and any related contracts or portions thereof; or c) suspend Contractor from receiving future solicitations.

IV. ADDITIONAL TERMS FOR FEDERALLY-FUNDED CONTRACTS (if applicable)

This section contains standard terms and conditions that apply towards any Contract or order of goods and services from the Contractor that utilize funds provided by the Federal government.

1. **BUY AMERICAN ACT.** The Contractor shall comply with 41 USC 10a-10c (the "Buy American Act") by purchasing only American-made equipment and products with Contract funds except articles, materials, and supplies — a) for use outside the United States; b) for which the cost would be unreasonable, as determined in accordance with federal regulations; c) for which the Purchaser determines that domestic preference would be inconsistent with the public interest; or d) that are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality.

2. **CENTRAL CONTRACTOR REGISTRATION AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS).** Unless exempt under 2 CFR 25.110, the Contractor shall comply with 2 CFR 25 and be registered in the federal Central Contractor Registration (CCR) system; maintain an active CCR registration with current information at all times during the period of performance for this Contract; and provide its DUNS number to the Purchaser when requested.

3. **DAVIS-BACON AND RELATED ACTS.** If the work performed by Contractor employees is subject to the Davis Bacon Act and Davis-Bacon prevailing wage provisions contained in applicable federal laws, the Contractor shall a) pay at least once per week wages to Contractor laborers and mechanics at a rate not less than the minimum wages specified in wage determinations made by the U.S. Department of Labor; and b) provide to the Purchaser each week U.S. Department of Labor Form WH-347 "Payroll (For Contractors Optional Use)" stating the wages paid to Contractor laborers and mechanics engaged in work under this Contract. Should wage determinations made by the U.S. Department of Labor conflict with the prevailing wage rates established by the Washington State Department of Labor and Industries, the Contractor shall pay Contractor laborers and mechanics at a rate not less than the higher of the two rates.

4. **DRUG-FREE WORKPLACE.** The Contractor shall comply with the Drug-Free Workplace Act of 1988, 41 USC 701-707, as amended. Compliance with the Drug-Free Workplace Act includes publishing a drug-free workplace statement and establishing a drug-free awareness program for Contractor employees; and taking actions concerning Contractor employees who are convicted of violating drug statutes in the workplace. The Contractor shall provide written notice of a conviction of a Contractor employee of a drug violation in the workplace to the Purchaser within seven (7) calendar days after the Contractor learns of the conviction.

5. **FEDERAL DEBARMENT AND SUSPENSION.** The Contractor certifies that neither it nor its “principals” (as defined in 49 CFR 29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the Contractor agrees not to enter into any arrangements or other contracts with any party that is on the “List of Parties Excluded from Federal Procurement or Non-procurement Programs” which can be found at <https://www.sam.gov/portal/public/SAM/>.

6. **FEDERAL RESTRICTIONS ON LOBBYING.** The Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 USC, Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

7. **TEXTING WHILE DRIVING.** The Contractor shall adopt and enforce policies that ban text messaging while driving Contractor-owned vehicles or privately owned vehicles being used to provide goods and/or services under this Contract.

8. **TRAFFICKING VICTIMS PROTECTION ACT.** As described in 2 CFR Part 175 the Purchaser may terminate this Contract, without penalty, if the Contractor is found to be in violation of the Trafficking Victims Protection Act of 2000.

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL 10/20/2016